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Supreme Court of the United States.

October Term, 1935.

No. 127.

Radio Corporation of America,
Petitioner,
v.
Raytheon Manufacturing Company,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

REPLY BRIEF FOR PETITIONER.

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STATEMENT.

Several points made in the respondent's brief are, we believe, without foundation and are perhaps likely to cause some misapprehension unless explained.

The first is the contention that there was no issue for transfer to equity because the respondent in its pleadings was only asserting its rights at law. This argument assumes the very question in issue, which is whether, in respect of the releases, the respondent's pleadings asserted any rights at law at all.

The second is the contention that the District Court should not have determined that a sealed instrument was involved and that the question should have been tried to a jury. This point, even if sound, is not open because it was never raised in the District Court. In any event, the determination of the District Court that a sealed release was in-

volved was plainly correct; it was inescapable on the record.

The third is the contention (made throughout the respondent's brief and particularly significant because it is relied on as the chief basis for the respondent's charge that the release was illegal and oppressive) that the release was obtained without consideration. This contention, which is made for the first time here, is not merely unsupported by anything in the record, but is inconsistent with facts which do appear in the record.

Before considering these matters we should also point out that there is possibility that confusion may arise as to the release in question from the ambiguous fashion in which the respondent refers in numerous places to the Raytheon Companies and the provisions of the March 19, 1929, document. To avoid this we urge the Court to keep in mind the following undisputed facts:

(1) The only plaintiff-respondent is the *Massachusetts* corporation *Raytheon, Inc.* It sues under an alias, using its former name, Raytheon Manufacturing Company (R. 3, par. 1).

(2) The only cause of action stated is alleged to have accrued to *it*, Raytheon, Inc., *before* May 28, 1928 (Disclaimer, R. 12, 13).

(3) On May 28, 1928, there was incorporated in *Delaware* the corporation *Raytheon Manufacturing Company*, and Raytheon, Inc., then by oral agreement assigned to it this cause of action (R. 11, 12, 13, 21, 35).

(4) Under date of March 19, 1929, a patent license and a supplementary agreement, each containing releases, were executed as one transaction (R. 42-54).

(5) By the agreement of March 19, 1929, the petitioner granted: (*a*) a patent license to Raytheon Manufacturing Company (of *Delaware*) (R. 43-45); (*b*) a general release to both Raytheon Manufacturing Company (of *Delaware*) *and* Raytheon, Inc. (of *Massachusetts*) (R. 53-54).

(6) By the agreement of March 19, 1929, Raytheon Manufacturing Company (of *Delaware*) in return (*a*) agreed to pay royalties and (*b*) granted two general releases to the petitioner (R. 50, 54), subject to the provision that notwithstanding these general releases, it might bring suit against the petitioner for any damages claimed by *it* (not those accruing to Raytheon, Inc., the present plaintiff-respondent) subject to three limitations and qualifications (R. 53, par. 3):

(*a*) That "the Licensee" (*Raytheon Manufacturing Company* of *Delaware*) should not bring suit unless and until Radio Corporation had paid damages (whether by judgment or settlement) to other plaintiffs having similar causes of action;

(*b*) that "the Licensee" (*Raytheon Manufacturing Company* of *Delaware*) should in no event be entitled to recover more than the maximum paid to any such other plaintiff;

(*c*) that any judgment obtained by "the Licensee" (*Raytheon Manufacturing Company* of *Delaware*), thus limited in amount, should be satisfied only by credit against royalties due from it under the license.

(7) By the agreement of March 19, 1929, Raytheon, Inc. (of *Massachusetts*), the plaintiff-respondent here, also granted a general release to the petitioner (R. 54).

In its declaration respondent has attacked (pars. 36, 37, R. 10, 21; pars. 39-40, R. 11, 21-22) both the release granted by it and that granted by Raytheon Manufacturing Company (of Delaware).

ARGUMENT.

I.

The respondent's first claim, that in attacking the release it "unequivocally alleged only its rights at law" (Respondent's Brief, p. 16), assumes the point in issue.

The primary question for decision here is whether the respondent has asserted any legal rights at all. To argue that, because the respondent did not raise an equitable right it therefore must be taken to have alleged only legal rights, is to argue in a circle.

The nature of the rights asserted by the respondent in the attack upon the release depends upon the legal effect of the facts pleaded, not upon intentions or desires of the pleader. A pleader might prefer to try a bill of interpleader to a jury or to obtain a decree for specific performance or for an injunction in a court of law, but asserting such rights as "rights at law" would not make them such. If the pleadings ask for a result which cannot be obtained at law, they do not assert legal rights; at law they assert no rights at all.

The assertion that section 274b of the Judicial Code is not involved in the case similarly assumes the point; it assumes that the respondent's pleadings stated a case for relief at law without the necessity for equitable intervention. But this is the very question to be decided.

Under the old practice, if a defendant in an action at law pleaded a release under seal and the plaintiff replied admitting the execution of the release, but asserting that it was invalid because obtained by fraud or duress, the defendant could have demurred to the reply on the ground that it failed to show any rights cognizable at law. Under the rule in *Hartshorn* v. *Day*, 19 How. 211, and *George* v. *Tate*, 102 U.S. 564, such a demurrer would have been sustained. If the plaintiff wished to proceed further, he would have had to resort to a separate bill in equity.

Under the present practice, the petitioner's motion for transfer to equity challenged the sufficiency of the respondent's pleadings to raise any issue for trial at law with respect to the release. It was an assertion that the respondent's right to attack the release was exclusively equitable and therefore triable to the judge sitting as chancellor as under the old practice (*Liberty Oil Co.* v. *Condon National Bank*, 260 U.S. 235). The ruling of the District Court granting the motion was similar to a ruling sustaining a demurrer under the old practice. It was a ruling that no legal right to attack the release had been disclosed on the pleadings. Under the old practice, such a ruling would have turned the respondent out of court once and for all. Under section 274b, however, the respondent was given the opportunity to try the issue in equity without the necessity of bringing a separate suit.

In short, if the District Court was correct in ruling that the release could not be impeached at law, then it was only because the respondent's pleadings raised an equitable issue that they had any validity at all; it was only by virtue of section 274b that any question of the validity of the release remained in the case.

The respondent's subsequent disclaimer of equitable relief (R. 36) and its formal declaration that it had no evidence to tender in support of a claim to equitable relief (R. 38) in no way affected or enlarged the respondent's right to attack the release at law. They served merely to defeat its rights in equity.

The respondent suggests that, if it had proceeded to try out the validity of the release in equity, it would have lost its right to object to the transfer and to claim a new trial at law (Respondent's Brief, p. 9). This argument is without foundation. In *Adamos* v. *New York Life Insurance Co.*, 293 U.S. 386, the plaintiff obtained a reversal of the order of transfer and a new trial at law after having proceeded to a full trial in equity under protest.

The respondent also argues that the final decree was improper in that it found the release to be valid without a hearing (Respondent's Brief, p. 16). But the respondent expressly requested the Court to enter a decree upon the same basis as if the case had been set for hearing. In its motion for final decree, the respondent stated (R. 38):

> "3. The plaintiff tenders in equity no evidence in support of any right to relief in equity and now has no such evidence and, therefore, before hearing, announces the conclusion of its evidence in equity in support of any such right in equity, to the same extent and with the same effect as if the court in equity should now have set this case for hearing of evidence against the plaintiff's protest."

Since the respondent expressly asked the Court to enter a decree as if there had been a hearing and as if, at such hearing, the respondent had failed to prove its case by any evidence, the Court had no option but to enter a decree affirming the validity of the release.

We submit, therefore, that the respondent's first point adds nothing to the case. If, as a matter of substantive law, the respondent under its pleadings *could* not impeach the release in a court of law, the fact that the respondent *did* not impeach it in equity served merely to leave the release standing unimpeached and unimpeachable, both at law and in equity.

II.

The respondent's second claim, that the respondent was entitled to jury trial on the question whether the release was under seal, is unsound.

No question as to the existence or sufficiency of the seals was raised in the District Court. The Circuit Court of Appeals ruled that the question could not be raised for the

first time on appeal (R. 72). This ruling is plainly correct.

(*a*) The respondent asserts that it "at all times has insisted on trial by jury" on the question whether a seal existed (Respondent's Brief, p. 18). This is not so. The question of seals was not raised at any time in the District Court. So far from demanding that the issue be tried by jury, the respondent never raised the issue at all.

The only contention advanced by the respondent in the District Court was that it was entitled to jury trial "on the question of the validity of the release" (R. 41), no reference to seals being made either in its bill of exceptions (R. 41) or its assignment of errors (R. 61). The issue of the *validity* of the release presents merely the question whether it was executed under *duress*, this being the only ground of invalidity alleged in the pleadings. That the issue of duress was the only issue which the respondent raised or intended to raise in the District Court by its attack upon the *validity* of the release is illustrated by its own motion for jury issues (R. 31). In this motion the respondent moved that the Court order the framing of a jury issue "upon the issue of the validity of the release executed by the plaintiff" (using the same phraseology as that used in its bill of exceptions, R. 41), and then went on to suggest the following issue: "Was the release dated March 19, 1929 executed by the plaintiff under duress?"

Similarly, in the respondent's motion to rescind the transfer to equity (R. 36-37), where the respondent again asserted its right to jury trial (R. 37), the issue upon which jury trial was demanded did not include any question of seals, but related exclusively to the question of duress (R. 36-37).

The present contention, that the issue of the validity of the release raised in the District Court included an issue as to whether the release was under seal, is plainly unsound. Even if sound, the point should have been raised in the trial court. Where a party does not raise an issue in the

District Court and does not demand jury trial upon it in the District Court, he cannot claim a jury trial for the first time on appeal.

Duignan v. *United States*, 274 U.S. 195.

(*b*) It is well settled that a general finding or ruling imports a determination of subsidiary facts necessary to support it.

United States v. *Winston*, 170 U.S. 522, 526.
National Surety Co. v. *Lincoln County*, 238 Fed. 705, 712-713 (C.C.A. 9).
Treat v. *Farmers Loan & Trust Co.*, 185 Fed. 760 (C.C.A. 2).

The respondent, however, appears to contend that Judge Lowell, upon considering the release itself and in the absence of any contrary evidence (R. 41), could not have found that a sealed instrument was involved. This is plainly unsound. The principal license contract (appearing in the record at pages 42 to 52, and designated "A") contained a full and unqualified release by Raytheon Manufacturing Company, *and this contract was under the seal of all parties, including Raytheon* (R. 52). Raytheon Manufacturing Company is alleged by the respondent to have become the beneficial owner of the claim in suit by an agreement made in 1928 (R. 12-13), a year prior to the execution of the release, and it is also alleged that this action is brought for the exclusive use and benefit of that company (R. 12-13). This release by the real party in interest under its seal (R. 52), being attacked by the respondent, plainly justified (indeed, in the absence of any contrary suggestion, it required) a determination by the Court that a sealed release was involved.

In addition to this release under seal executed by the real party in interest, there is also the supplemental agreement

executed contemporaneously with the principal license agreement. (The supplemental agreement appears at R. 52-54, and is designated "B.") This supplemental agreement contained a clause modifying the sealed release executed by Raytheon Manufacturing Company of Delaware, and also contained a full release by Raytheon, Inc., the actual plaintiff of record. This supplemental agreement exhibits merely the seal of one of the signatories, having no seal affixed opposite the names of the Raytheon Companies (R. 54). But it would make no difference even if this supplemental agreement were treated as not under seal, because the respondent, in order to maintain its action, had to attack, and did attack, not merely this supplemental agreement, but also the principal agreement itself.

The respondent's attempt to distinguish between the fully sealed license agreement ("A," R. 42-52) and the partially sealed supplemental agreement ("B," R. 52-54) overlooks the fact that either agreement is enough to bar this action. If the license agreement, "A," be taken by itself, we have a full and unqualified release by the real party in interest, after it became the owner of the claim, effectively barring the claim.* If the supplemental agreement be taken by itself, we have a modified right to recovery by the real party in interest, but it is a right which cannot be asserted in the present action, for two reasons: (*a*) the supplemental agreement also contains a full release by Raytheon, Inc., the nominal plaintiff, precluding any proceedings in its name, and (*b*) the qualified right of relief granted by the supplemental agreement is limited to a right to obtain a *credit against*

* The respondent for the first time suggests here that it should have been entitled to a jury trial on the question whether this release was intended to cover the claim sued on. Not only was this question not raised below, but it is not open under the pleadings which admit the execution of a release of the claims by "the plaintiff and its Delaware Corporation" (R. 10, 21).

royalties due from the licensee (not Raytheon, Inc., the nominal plaintiff, but Raytheon Manufacturing Company of Delaware) under the original license agreement (R. 53), a form of relief which can be obtained, if at all, only by the licensee in its own name and for its own benefit.

The respondent's case, therefore, involves, not a separate attack upon the releases contained in the partially sealed supplemental agreement, but a general attack upon all the releases together, including the sealed release contained in the fully sealed license agreement (*cf.* pars. 36, 37, 39, and 40 of the Declaration, R. 10-11, 21-22). Accordingly the District Court properly determined that the respondent was attacking a release under seal.

III.

The assertion that the release was executed without consideration is without any foundation whatever.

The chief ground upon which the respondent relies to show the invalidity of the release is that it was executed "without consideration." This assertion is made throughout the brief. It is relied on to prove that the release was oppressive and unfavourable to the respondent (Respondent's Brief, p. 14). It is relied on to show that the respondent may repudiate the release notwithstanding the admitted fact that it has retained and insisted on retaining the benefits received under the license (Respondent's Brief, p. 15). Most of all, it is relied on to establish the fact that the release itself is a contract in aid of a monopoly (Respondent's Brief, pp. 26, 27, 28, 33-34), although the license contract itself is accepted as an entirely fair, proper, and legal agreement (Respondent's Brief, pp. 4, 26).

We are entirely unable to find any basis for this novel claim, which was not made in either of the Courts below and which is entirely unsupported by the record. The respon-

dent alleges, at page 14 of its brief, that it appears *from the declaration* itself that the release was given for nothing. The respondent says:

> "The allegations of the declaration are, in substance, that the defendant . . . for no consideration . . . took away from a competitor . . . upwards of $9,000,000* of capital through the device of compelling that competitor to execute, for nothing, an apparent release of a valid claim for more than that amount . . ."

This is simply not so. The sole charge of invalidity made in the declaration is that the release was executed under duress. It is nowhere suggested that it was obtained without consideration. The most that can honestly be said about the declaration is that it is wholly silent on the point.

At other places in its brief the respondent seems to assert that the absence of consideration for the release is deducible from the release itself. It asserts (without any authority for the statement) that the release had no proper place in a license agreement (pp. 26-27), entirely disregarding the fact that the contract also contained a similar release running from the petitioner to the Raytheon Companies (Supplemental Agreement, sec. 5, R. 53). It also asserts that the royalties paid by the licensee are "the full equivalent of any patent right, if any, used by the licensee;" that in this way "the defendant is compensated fully and in the intended way, for this use and at the defendant's established rate to others;" and that "the plaintiff has paid in full in royalties for the commodity received" (pp. 26-27).

But these are statements of *fact* for which there is not the slightest foundation in any pleading, evidence, or find-

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* This figure is obtained by trebling the damages which the respondent hopes to recover if it can repudiate its release. It, of course, does not represent capital taken from the respondent on any theory.

ing. The assertion that it was the royalty payments only and not the releases which entered into the consideration for the license is an assertion of *fact;* it is an assertion that the royalty rate was fixed without regard to the fact that the contract also contained releases. But there is nothing in the record to show that such was the fact; there is no indication what the rate of royalty would have been if there had been no releases. The assertion that the royalties were the "full equivalent" of the rights granted, and that by payment of royalties the petitioner has been compensated "fully and in the intended way," is an assertion of *fact;* it is an assertion both as to the *intention* of the parties and as to the *value* of the rights granted. But the record is silent as to the intention of the parties on this point, and it gives no indication of the value of the patent rights granted or its relation to the royalty rate. The assertion that the rate was "at the established rate to others" is an assertion of *fact;* it is an assertion that other similar licenses were granted to other persons on similar terms; and that there was an established rate of royalty for such licenses. But there is no hint in the record with respect to any of these matters; moreover there is no indication whether these unidentified "others" executed similar releases in order to obtain a similar rate of royalty.

Not only are the respondent's assertions thus wholly unsupported by the record, but an examination of the contract in question demonstrates their error. The releases in question are physically a part of the license agreement, an elaborate contract containing mutual promises and grants on both sides. The contract itself indicates that these mutual promises and grants were intended to be interdependent. At the outset of the agreement, it is recited (R. 42):

> "Now, therefore, in consideration of the promises, of the licenses granted herein by the Licensors to the

Licensee and of the mutual covenants herein contained, it is agreed as follows: . . ."

Furthermore, the contract contained a general release from the licensors to the Raytheon Companies in identical language (mutatis mutandis) with the releases given by the Raytheon Companies (Supplemental Agreement, sec. 5; R. 53-54).

Thus it is plain that the license contract and the releases given by the Raytheon Companies were given for abundant consideration. In return for a promise to pay royalties at an agreed rate and releases of claims, the Raytheon Companies received a license and a corresponding release of claims, including claims for past infringement. The respondent insists apparently that it is not bound even to give up this release to it which was contained in the same document. It cannot be assumed that the royalty rate was fixed without reference to the releases, that the releases did not enter into the consideration for the contract, or that the mutual releases were not, at the very least, consideration for each other.

This argument of the respondent's amounts to saying that it is entitled to single out one particular paragraph of a multilateral agreement in which each party agrees to do certain things in consideration of the other's promises, and to claim that this paragraph, taken by itself, is unilateral and therefore without consideration, and hence may be disregarded with impunity. The claim, in other words, is simply that respondent is not bound by those parts of the agreement which impose an obligation upon it, while respondent affirmatively insists on retaining all the benefits conferred by the remainder of the agreement. The same argument appears, under slightly different phrasing, at pages 26 and 27 of respondent's brief, where it is said in substance that any release of an anti-trust claim, no matter

what the other considerations may be which enter into the settlement, is void as against public policy, because it prevents the releasing party from prosecuting his claim to a successful conclusion and thus obtaining cash damages with which to increase his competitive business resources.

It is also significant that the respondent now apparently repudiates the ground upon which the Circuit Court of Appeals decided the case. That Court took the position that "the release . . . enters into and forms an integral part of an agreement alleged to be illegal because establishing a monopoly in restraint of interstate trade" (R. 74).

The error of this theory of the case (see Petitioner's Main Brief, pp. 22-24) is apparently admitted by the respondent, who now expressly concedes that the license contract is a perfectly proper agreement (Respondent's Brief, pp. 4, 26) and bases its whole case on the contention that the release, so far from being an integral part of the license contract, was not a proper part of it at all. For the reasons above given, however, we respectfully submit that this change of front does not improve the respondent's position.

Conclusion.

The petitioner reiterates its assertion that, on the pleadings and on the record, there is no inherent illegality in the license contract or any part of it. The contract itself violates no law. The sole defect charged is that the consent of the Raytheon Companies was improperly obtained by means of the pressure of external circumstances. If these external circumstances involved illegal conduct by the petitioner, then the Raytheon Companies had the right to *rescind* their contract, just as any party who has been improperly or illegally forced to any act may *avoid* it. But this right to rescind does not include the right to retain the benefits of the contract while repudiating the burdens; it does not

include the right, now frankly asserted by the respondent, to enforce the license contract while repudiating the releases. The contract, being an entire contract, must be accepted or rejected in its entirety.

Since a sealed contract is involved, which under the decisions of this Court can be rescinded only in equity; since the contract is not executory, but has been executed; since rights have accrued under the contract, including rights under the decree obtained by the Raytheon Companies enforcing this very contract in the Massachusetts Court; since only a court of equity has the power to untangle the rights of the parties, if, indeed, they can be untangled at all;—for these reasons we submit that the respondent was properly ordered to seek its relief in a court of equity.

Respectfully submitted,

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